

An Educator's Guide to Safe Schools for Alabama's Children

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NOTICE

The information contained in this manual is intended to provide a general overview of issues related to school safety law. Although the Attorney General's Office has made every effort to ensure that the material included reflects the Alabama statutes and court decisions effective as of December 1, 2001, it should be noted that the information is subject to constant change. Although the information presented strives for accuracy, it should not be taken as private legal advice. School administrators should consult a competent school attorney or the local district attorney for guidance on specific student searches or in creating student search policies.

An Educator's Guide to Safe Schools for Alabama's Children

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Search & Seizure

The legal rights of teachers and principals to ensure the safety of all students

There are times when educators must search students as well as their belongings while the students are on school grounds for evidence of weapons, drugs, or other illegal material to prevent violence and assure the safety of all the students and faculty. The United States Constitution gives educators the right to search students and their belongings *as long as* the searches are conducted in a way that does not violate a student's civil rights. Educators should not shy away from conducting reasonable searches in the interest of assuring the safety of all students because of fear of being sued for violating one student's rights.

Fortunately, the law provides enough flexibility for school officials to protect students *and teachers* while still enforcing school codes of conduct. This handbook addresses types of searches, various circumstances that may make it necessary to search, and methods of searching. In addition, the back inside cover of this handbook includes an important checklist for review before considering or conducting a search.

What is a School Search?

A search is any action by government officials, including school teachers and principals, that intrudes upon and invades an individual's protected privacy interests by examining the individual's body or items that are not exposed to public view. A **school search** is simply a search that meets this definition and takes place on school property. For example, a school search occurs when a principal asks a student to open her purse or backpack so the principal can look at its contents. Another example would be a situation in which a school official asks a student to produce a concealed object from underneath the student's shirt or jacket or from his pocket.

School searches may be performed against an *individual* or with an entire *group*, each with its own set of criteria. In general, school officials and teachers may search students who are under their authority without fear of legal ramifications as long as *the search is reasonable* and the *school official does not intentionally harm the student*.

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The Fourth Amendment to the United States Constitution ensures that an individual will be free from *unreasonable* governmental searches and seizures. Students are guaranteed this liberty just as any other citizen. As you will see, though, there are steps that educators can take to make sure a school search is legal.

Protecting the student from harm during the search means that the student cannot be physically injured during any part of the search process. Any embarrassment the student suffers should be minimized if possible, but not to the exclusion of protecting the safety of all the students.

Before any search, a school official should review the checklist on the back inside cover of this booklet.

Do It Right the First Time

Making sure that any illegal material seized during a search is not later excluded as the result of an improper search

The United States Supreme Court has said that if a search of a student is not properly conducted, evidence of a crime or other prohibited behavior discovered during the search will be subject to the **exclusionary rule**. This rule essentially says that evidence of a crime that is obtained from an unreasonable or an improperly performed search cannot be used to prove the guilt of a student and, therefore, cannot be used to punish the student. For example, if a principal conducted an improper search of a student's backpack and found marijuana, a court, in determining the student's guilt or innocence, could not consider the marijuana or the fact that the marijuana was found.

Individualized School Searches by Educators

The rules governing when and how an individual student may be singled out from other students for a search by educators

The Supreme Court in a landmark case, known as *T.L.O.*, established the **reasonable suspicion standard** for educators when performing school searches.¹ This standard is lower than the standard applied to law enforcement officers who must comply with the **probable cause standard** and obtain a warrant prior to a search. **Reasonable suspicion** is "specific and articulable facts, which taken together with rational inferences from those facts, reasonably warrant intrusion."²

According to the United States Supreme Court, "the legality of the search of a student should depend simply on the reasonableness, under all the circumstances, of the search."³ Sufficient probability of wrongdoing, not certainty, is required. Despite the fact that the standard is lower for educators conducting searches than it is for police officers conducting searches, students do not "shed their constitutional rights . . . at the schoolhouse gate."⁴ Therefore, school officials cannot invade the rights of students more than is necessary to assure the welfare and safety of all students and teachers.

The type of search should fit the suspicion that prompts it. For instance, a Michigan court dismissed a case that involved a strip search for drugs because the student's only suspicious behavior involved ducking behind a car in the school parking lot and giving a false name to the school security guard while she should have been in class.⁵ The court explained that, although the student's behavior created reasonable grounds for suspecting that the student had violated a school rule or law, it did not create a suspicion that could be confirmed only by strip-searching the student. In this case, the search did not fit the suspicion that prompted it.

The United States Supreme Court developed a two-part test to determine whether individualized searches by educators are reasonable and permissible.⁶

- 1) *The search must be justified at its inception.* In other words, the educator must have reasonable grounds for suspecting that a search will provide evidence that the student has violated or is violating a school regulation or a law.
- 2) *The search must be reasonably related in scope to the circumstances which justified the search.* The type of search allowable will be one that is reasonably related to the circumstances prompting the need to search – the educator must not be excessively intrusive in the light of the age and sex of the student and the nature of the infraction.

The Reasonable Search Test

The following list, while not exhaustive, describes examples of situations where an educator through **personal observations** may draw a reasonable suspicion prompting the need to search:

- A student's possession of rolling papers typically found with marijuana use.
- A student's previous misbehavior and unusually heavy use of public telephones.
- A student's possession of drug paraphernalia.
- An observation of a request to sell drugs.
- A student's record of concealed weapons, plus suspicious behavior.
- A student's presence in school restroom, without a pass, coupled with nervous behavior where restrooms were frequently scenes for narcotics activity.
- The physical observation of drug use, such as the odor of marijuana, bloodshot or watery eyes, and behavioral indications of drug use.⁷
- Reports of parental concern regarding a specific student.⁸

In addition, school officials may derive reasonable suspicion from **tips provided by other students** or rumors of a violation by a specific student if corroborated by other evidence of a violation. For example, one case involved a situation where a student told the school principal that another student "CB" was going to make a drug sale at school later in the day.⁹ The student who reported to the principal had received information from another student that CB had hidden the drugs in his coat. The court held that, while the informant did not provide the identity of the student who in fact observed the contraband, information from an anonymous source

can help provide the necessary reasonable suspicion. In addition, the court noted that school administrators had received some corroboration when they observed that CB, who was reported by the informant to have hidden the drugs in his “big old coat,” had such a coat in his possession when the search was initiated.

The United States Supreme Court recently addressed the issue of **tips from anonymous sources**. The Court explained that an anonymous tip suitably corroborated and with sufficient indications of being reliable may, in certain situations, provide reasonable suspicion.¹⁰ In another case, the Court found sufficient indications of reliability where the informant provided very detailed information. The informant accurately predicted that the individual would leave an apartment at a specified time, get into a car matching a particular description, and drive to a named hotel.¹¹ Due to the accurate description, the Court held that the tip was reliable and therefore a search was reasonable. Therefore, *a school official relying on an anonymous tip must believe that the tip is reliable.*

Generalized School Searches

When and how randomly selected students or all students may be searched (sometimes called “suspicionless searches”)

With few exceptions, some level of individualized suspicion is necessary for a search to qualify as reasonable under the Fourth Amendment. But the courts have upheld *generalized searches*, as well, meaning those where no particular student is suspected. Requiring students to pass through metal detectors as they enter the school building or drug testing students as a condition of student participation in certain activities are considered generalized searches. There are three criteria to determine whether a generalized search without a specific suspicion is legal:

- 1) the nature of the privacy interest upon which the search at issue intrudes,
- 2) the character of the intrusion, and
- 3) the nature and immediacy of the government concern and the efficacy of the means utilized to address that concern.¹²

School officials should be reminded, however, that the more intrusive the search, the greater the degree of individualized suspicion required. In undertaking either an individualized search or a generalized search, school officials should be prepared to state the reasons for undertaking the search. In general, the more intrusive the search, the more likely it will constitute a Fourth Amendment violation.

Various Methods for Conducting Generalized and Individualized Searches

Metal Detectors

Although the Supreme Court and Alabama's appellate courts have not considered the subject of metal detectors, their use is generally upheld as reasonable across America. Metal detectors pose only limited intrusion to a person's privacy and that intrusion is usually outweighed by the need to detect the presence of firearms and other weapons.

Metal detectors, however, should be used in the least intrusive manner possible. One way to minimize the privacy intrusion is to provide advance notice to students and their parents. Providing advance notice, perhaps through the school handbook, would allow students the opportunity to remove dense metal objects prior to activation of the detector, thus eliminating possible embarrassment and a more intrusive physical search of the student. Conspicuous postings at all entrances would also give visitors notice that they will be subjected to metal detectors. Additionally, school authorities should develop plans limiting the amount of discretion granted to those employees who operate the metal detectors. Schools using these devices should apply them evenhandedly to all students and visitors entering the building.

Requiring examination of each student may not be feasible, however, and consequently, the number of students examined may be limited by using a random formula. For example, one court explained that the employees operating the device might choose to search every second or third student although there is no individualized suspicion present.¹³ These employees are prohibited, however, from selecting a particular student to examine with the metal detector unless there is reasonable suspicion to believe the student is carrying a weapon. In addition, a "chance formula" such as rolling dice to determine which school and classrooms would be subject a school search with metal detectors for weapons on a particular day is reasonable.¹⁴

Point-of-Entry Inspections

These searches occur when school authorities require students to open their backpacks for inspection prior to entrance into the school building or upon leaving the library. Requiring all students to submit to this form of search represents a somewhat greater intrusion on privacy interests than does the use of metal detectors because this technique permits school officials to look inside closed containers. Although requiring a student to open a closed container for inspection clearly constitutes a search for purposes of the Fourth Amendment, this conduct is permissible, provided school authorities follow certain rules designed to minimize the degree of intrusion. The intrusion may be diminished by following the same policies and procedures explained in the previous discussion concerning metal detectors. Again, it should be stressed that under no circumstances may a point-of-entry inspection be used by any school employee as a device to search particular students who are suspected of carrying drugs or weapons.

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If an educator suspects a student has drugs or weapons, the search must be conducted in accordance with the reasonable suspicion standard described in the first section of this handbook.

There is presently no Alabama law concerning the use of point-of-entry inspections in public schools. A public library, as a publicly funded agency, has the right to inspect the personal bags and briefcases of library patrons leaving the library, however.¹⁵ School officials may use this same principle in searching students' bookbags. Searches of patrons leaving the library are analogous to those conducted on students at school as a condition of entering the school building. Such a policy may be established if:

- 1) patrons have adequate notice and an expectation of the search,
- 2) permission for the search is requested,
- 3) patrons are informed that they are free to leave before using the library if they do not wish to consent to the search or that they may check their bags or briefcases at the library's desk,
- 4) the search is visual only and the individual conducting the search does not touch the patron's property, and
- 5) the search is not done by police officers and is not done for the purpose of gathering evidence for a criminal prosecution.

Surveillance by School Officials

Surveillance (watching an area either by use of video cameras or the naked eye) is permissible as long as the area or activity being surveyed is considered a common area and open to the public. Two examples of such common areas are parking lots and hallways, in which no student would have a reasonable expectation of privacy. If a school official has the right to monitor the activities of a common area, then the monitoring of that area can be done through video surveillance. Successful legal defense of surveillance searches is more likely if the school has posted signs that warn that all persons in a certain area are subject to surveillance by video camera.

Listening in on or recording private conversations is generally not permissible without the consent of one of the participants in a conversation.¹⁶ The only exception would be concerning conversations that can be heard with the "naked ear."

In addition, it is usually permissible for school officials to make observations from **concealed, stationary locations**. For example, a school official's limited observation of a student in the school restroom by way of a two-way mirror does not violate the student's Fourth Amendment rights.¹⁷ School officials, however, should be cautious when conducting surveillance in restrooms or locker rooms because some courts have held that there is a greater expectation of privacy in these areas. When a bathroom stall is equipped with a door, individuals in the stall are accorded a reasonable expectation of privacy.¹⁸ If a school conducts surveillance in a restroom or locker room, students should be observed only by designated school officials or security personnel of the same gender as the students under surveillance, and there should be signs posted that warn students that surveillance cameras may observe them.

The Plain View Doctrine

During the course of their duties, school officials may come across an item they recognize as evidence of a violation of a school rule or as evidence of a crime. The **plain view doctrine** permits school authorities to seize these items without violating the Fourth Amendment as long as two conditions are present:

- 1) At the moment the items come into view, the school officials are legitimately present and have not already violated a student's Fourth Amendment rights, and
- 2) It is immediately apparent to the school officials that they are observing evidence of a crime or infraction.¹⁹

For example, while patrolling the school parking lot, a principal sees a bag of marijuana through the window of a motor vehicle. Since the principal immediately recognizes the marijuana as an illegal drug, he may seize it.

Do not become overly cautious. The simple act of observing students or using senses such as smell or hearing to monitor student activities do not constitute a “search.”



Alcohol and Drug Testing

Random drug testing of students involved in extracurricular activities is generally considered permissible. Students and their parents should be notified at the beginning of the school year that drug testing is part of the school safety program.

An example of a valid and successful drug screening program is discussed in a case involving Oregon's Veronia School District. The school's policy required all students participating in school athletics to consent to random, suspicionless drug testing.²⁰ The student being tested, accompanied by an adult monitor of the same sex, would produce a sample at a urinal in an empty locker room. The student remained fully clothed and with his back to the monitor. If the student tested positive, he was given the option of participating in an assistance program that included weekly urinalysis or suffering suspension from athletics. Only the superintendent, principals, vice-principals, and athletic directors had access to the results. The Supreme Court upheld the Vernonia School District's policy, explaining that athletes have a reduced expectation of privacy. The Court relied heavily on the fact that the method used for testing minimized the privacy intrusion. Also, the results of the tests were accessible

Attorney General's Opinion

No. 99-116 / Drug and Alcohol Testing

Question: *Can local boards of education implement a policy of random drug testing for all students at its alternative schools?*

Opinion: Because the law is not well settled, this Office is unable to opine whether a local board of education may implement such a policy. If the board chooses to pursue random drug testing of all students attending its alternative school, school officials should conduct the testing as unobtrusively as possible, limit it to cases where officials find a compelling need to protect students, and pursue it only after public notice has been given and public discussions have been held.

only by a limited number of school personnel and were not disclosed to law enforcement authorities, and that the school provided evidence of high drug usage among student athletes in Veronia. The Court cautioned, however, against assuming that this ruling could be expanded to allow for random drug testing of the general student body. Therefore, for a random, suspicionless drug test to be reasonable, the policy should be along the lines of that approved in the Veronia School District case.

When a drug test is based on *individualized suspicion*, such as observing a student with alcohol, courts are reluctant to find the urinalysis was a reasonable search because possession of alcohol without any other indication of use would not be sufficient to create reasonable suspicion

of its use. The courts require that school officials suspect that drug and/or alcohol use is taking place *on school grounds* before an individual may be targeted for a urinalysis. One of the reasons urine tests for drug abuse among students is disfavored by the courts is that a urinalysis cannot differentiate between drug abuse that took place on school grounds versus drug abuse that took place elsewhere.

Attorney General's Opinion

No. 98-44 / Alcohol and Drug Testing

Question: Can a local board of education implement a random drug and alcohol testing policy of its employees without violating the constitutional rights of its employees?

Opinion: Employees of a local board of education who work in a safety-sensitive position can be randomly tested for drug and alcohol use. Drug testing of public school employees based on reasonable suspicion and following proper procedural guidelines is constitutional.

School Locker Searches

Generally, school locker searches do not require reasonable suspicion justification

because lockers are considered property owned by the school. Therefore, students have no legitimate expectation of privacy in their lockers.

Canine Searches

Random sniffing by drug-detection dogs of property, such as cars and lockers, does not constitute a search within the meaning of the Fourth Amendment.²¹ Therefore, school officials, without reasonable suspicion, can conduct such investigations. Once a drug-detection dog makes a positive alert to the presence of controlled substances in a locker, car, or book bag, the ensuing act of looking into that item is a search, and the dog's alert satisfies the reasonable-suspicion standard. Note, however, that the use of drug dogs on individually selected students, like metal detectors, is generally considered a search and should only be allowed when the school official conducting the investigation has the necessary reasonable suspicion to conduct the search.

Motor Vehicle Searches

Searches by school officials of motor vehicles parked on school grounds are generally upheld as permissible by the courts. If the search is based on individualized suspicion, reasonable grounds for suspicion must exist. School officials likely have no authority to search motor vehicles parked off school grounds.

Strip Searches

Strip searches are generally considered highly intrusive and viewed unfavorably by the courts. In the rare situations where such searches have been held constitutional, there were very specific and particular suspicions present. Strip searches can sometimes be reasonable in a school setting if, for example, the school official has reasonable suspicion that a particular student may be in possession of dangerous items, drugs, stolen items, or other illegal material. Nevertheless, for example, if a small amount of money is missing from a classroom and there is no reasonable suspicion of an individual student, then strip-searching the entire class is completely unreasonable.

Field Trips and School-Sponsored Events

Courts generally find searches conducted before or during field trips or school-sponsored events to be more reasonable than searches taking place during normal school activities because a wider variety of activities take place on field trips than on school grounds. Although technically the search may occur off school grounds, the same search and seizure rules apply during these events because the educators' authority over the students is expected to extend to wherever the students go while under the educators' supervision. For example, after giving advance notice to students and to their parents, it is considered reasonable to search students' luggage before a school-sponsored trip.

Seizure

A seizure of property occurs when there is some meaningful interference with an individual's ownership and usage of that property. For example, a seizure occurs when a school principal confiscates a student's backpack and takes it to the administrative office to hold. **The reasonableness standard applies to seizures as well as searches.**

The seizure of an individual may occur as well. In one example, the school principal interrogated a student based on a tip about a bomb threat.²² The student alleged that he was illegally seized and taken to the school office. The court ruled that the seizure was reasonable. Because two students implicated the student who was seized, and he did not refute the students' implications, the seizure was justified at its inception. This evidence led the principal to believe that questioning the defendant would reveal evidence that he had broken either the law or a school rule. Moreover, the magnitude of the suspected violation justified detaining and questioning the student to uncover information relating to the bomb threat.

Searches by School Resource Officers

A **school resource officer** is a sworn police officer assigned to a public school by the officer's police department. With the increasing level of violence in our schools, the use of school resource officers has become widespread. In non-school environments, police officers conducting warrantless searches are held to a **probable cause standard**. *Probable cause exists where facts and circumstances within a person's knowledge are sufficient to warrant a reasonable person to believe that an offense has been, or is being, committed.* It is not necessary that the person possess knowledge of facts sufficient to establish guilt, but more than mere suspicion is required. The probable cause standard is a higher standard than the **reasonable suspicion standard** for educators.

As the use of police officers in the public schools has increased in Alabama, questions have arisen concerning the proper standard applicable to searches and/or seizures of public school students. No Alabama court has ruled on this question, and the United States Supreme Court has not yet addressed whether the school resource officers are governed by the same standard that applies to school officials or whether probable cause is the appropriate governing standard.

Although no clear precedent or Alabama law exists, there are three primary considerations that govern school resource officers conducting searches. **First, the reasonable suspicion standard has been applied in cases in which a school official initiates the search or in which police involvement is minimal.** For example, if a principal asked a student to empty his pockets, and the student refused, the principal could ask the school resource officer to search the student.²³ The search by the school resource officer would be considered as reasonable because the resource officer was complying with the school principal's request. The officer did not initiate the investigation, but rather the principal initiated and conducted the entire investigation. In addition, the officer searched only when the principal directly asked him to do so. In this example, the school resource officer acts as the arm of the school official.

Second, the reasonable suspicion standard has been applied where a school resource officer on his own initiative searches a student who is on school grounds during school hours. For example, the school resource officer took a student to the school administrator's office. The student was caught skipping class, and the principal had informed the officer the day before that the student was suspected of bringing a gun to school. The officer then searched the student in the principal's office.²⁴ The initial reasons for the search satisfied the reasonable suspicion standard.

Third, the probable cause standard is generally applied in cases where "outside" police officers initiate a student search as part of their own investigation or where school officials act at the order of "outside" police officers. An example would be an after-prom dance where security is provided by uniformed police officers. Officers have probable cause and may search attending students who the officers suspect of alcohol use because of smell and observing the students' behavior.

To avoid a Fourth Amendment violation, however, it is important for school officials to be cautious about the level of discretion accorded to school resource officers. Whenever feasible, these officers should have a school official present when searching and/or seizing a student. The minimalist approach, where the school resource officer assists in a search, represents a more conservative path in school searches. Although this may not always be practical, erring on the side of caution is less likely to involve Fourth Amendment challenges. When school officials initiate an investigation and conduct it on school grounds in conjunction with police, “the school has brought the police into the school-student relationship.”²⁵ The reasonable suspicion standard applies to those involved in the “school-student relationship.” By participating, yet still occupying a somewhat passive role, school resource officers are less likely to invite a Fourth Amendment challenge.

Dress Codes

The clothing students wear may be considered an expression of the student's religious or political views, and, therefore, subject to the protections of freedom of speech guaranteed by the First Amendment of the United States Constitution.

The First Amendment prohibits government from interfering with an individual's right to freedom of speech and expression. For expressive speech to be protected by the First Amendment, the speaker must intend to convey a particularized message, and, there must be a great likelihood that those who viewed it would understand the message.²⁶

To curb violence, numerous states and school districts have adopted dress codes prohibiting students from wearing certain apparel to school. In response, numerous students have raised First Amendment challenges to these dress code requirements. Due to the special characteristics and unique nature of the public school environment, the First Amendment affords less protection to students. School officials, though, do not have unlimited discretion in determining what types of speech to prohibit. For example, if intended as a means of political or religious expression, a student's choice of clothing is protected by the First Amendment.

Additionally, school officials may not prohibit speech merely because *they dislike the message*. A school should attempt to justify any clothing style prohibition by documenting with evidence an actual need for the prohibition.

Clothing Representing a Political Statement or Cultural Identity

Rules regulating a student's appearance are generally lawful when they are shown to have an **effective relationship to the educational process**, rather than being merely representative of the stylistic preference of the school.

For example, students' conduct in wearing black armbands to school in protest of a war constitutes protected expression and the school cannot require the students to remove the armbands.²⁷ The law allows a regulation limiting students' speech if the conduct invades the rights of other students,

or “materially and substantially interfere[s] with the requirements of appropriate discipline in the operation of the school.” In sum, school officials must have a constitutionally valid reason for any regulation that curtails students’ speech.

School districts should determine what manner of speech is inappropriate in the classroom or in school.²⁸ A school is not required to tolerate student speech that is inconsistent with the school’s basic educational purpose even though the government could not censor similar speech outside the school.²⁹ For example, a federal court upheld a school’s decision to prohibit students from wearing Marilyn Manson T-shirts. The court recognized that the school prohibited the shirts because the group promotes amoral values that are inconsistent with educational goals, and the school did not intend to suppress student expression.³⁰

Sagging – Prohibitions on Gang-Related Clothing

“Sagging” is defined as the practice of wearing shorts or trousers pulled down several inches below the waist with boxer shorts exposed up to the waist. Some law enforcement experts believe that sagging is a fad developed by West Coast gangs allowing them to hide weapons inside their clothing. Through the establishment of dress code policies, some school districts have prohibited students from wearing sagging pants. Few courts have addressed the issue, however. Thus far the courts that have addressed the issue have concluded that sagging pants are not a form of protected expressive speech. School officials may prohibit students from dressing in this way on school property.³¹ For example, despite a student’s claims that wearing sagging pants allows him to express his “black urban identity,” sagging pants could signify gang affiliation to others or simply a growing fashion trend. Consequently, sagging pants do not convey a particularized message.

Earrings and Jewelry

If a school district can prove a relationship between earrings and maintaining discipline and order within the school, courts will likely uphold a policy forbidding such jewelry in the classroom. For example, one court upheld a school’s anti-gang policy prohibiting male students from wearing earrings.³² Dismissing the student’s claim that the policy infringed upon his “freedom to choose his own appearance,” the court instead focused on the school’s concern for student safety.

Hair Length

Although establishing a dress code is a proper school-board function, there is no consistent precedent in cases involving hair length regulations. As long as the policy is shown to be necessary to alleviate interference with the educational process and does not affect fundamental freedoms guaranteed under the Bill of Rights, courts will likely uphold these policies. For instance, a Texas court struck down a school district’s dress code that restricted the hair length of

male students.³³ The court held that the policy was not a valid means of achieving the objectives of maintaining discipline, fostering respect for authority, and projecting a good public image when balanced against sincerely held religious beliefs of Native American students who desired to wear their hair longer than the allowed length. In another case, however, a court upheld such a policy, explaining that there is no constitutionally protected right for an individual in a public high school to wear his or her hair in any length and style that the student so desires.³⁴

There must be sufficient evidence supporting disruption of the educational process to convince the court that the student has not been denied his or her constitutional rights by the imposition of the regulation. For example, in a Nebraska school system, evidence showed that more than half of the students that caused disciplinary problems wore their hair unusually long. This evidence did not convince the court that wearing long hair was the cause of the discipline problems, however. Therefore, the court held that a student was improperly denied continued attendance at the school due to the enforcement of a policy against long hair.³⁵ Whether the evidence will be sufficient to uphold enforcement of a dress code will likely depend upon the facts of the case.

Uniforms

Some school districts have created policies requiring students to wear school uniforms. For example, Act No. 97-581 of the Alabama Legislature authorizes the Mobile County Board of School Commissioners to adopt a policy requiring students to wear uniforms. Section 2(a) of the Act explains that the purpose behind mandating school uniforms is to provide students with an effective education without the threat of violence. Students may be suspended or expelled for noncompliance with a dress code mandated

by law, provided they are afforded due process.³⁶

Attorney General's Opinion

No. 97-259 / School Dress Codes

Question: *What actions can a local school board take if a student does not adhere to the dress code?*

Opinion: Students may be expelled or suspended for noncompliance with the dress code provided they are given notice and an opportunity to be heard. Such dress code can be enforced, but reasonable accommodation should be made for religious beliefs. Indigent students should be notified of programs and opportunities for assistance in obtaining uniforms.

Liability of School Officials

Alabama Law

The Alabama Constitution provides that the State of Alabama is immune from lawsuits brought against it - this is called **sovereign immunity**. Because school officials and teachers are considered agents of the State, they also enjoy a certain amount of immunity from civil lawsuits, often known as state-agent immunity. **State-agent immunity**, in general, provides that school officials and teachers are immune from civil liability for any negligent or unintentional harm or injury they may cause in their official duties. This includes exercising judgment in educating students.³⁷

Alabama's immunity statute as it appears in the Alabama Code provides: "except in the case of excessive force or cruel and unusual punishment, no employee of the State Board of Education or any local board of education may be held civilly liable for any action carried out in conformity with state law or school rules regarding the control, discipline, suspension, and expulsion of students."³⁸

Alabama law also provides for immunity in specific circumstances. Teachers or administrators who, in good faith, report suspected drug abuse to the appropriate authorities are provided with immunity from civil and criminal liability.³⁹ Moreover, a school official's good faith reports to police of a student's criminal act are protected from any suit for libel or slander.⁴⁰

State agent immunity, however, is not a defense when a school official or teacher acts willfully, maliciously, illegally, fraudulently, in bad faith, beyond his authority, or under a mistaken interpretation of the law.

To prevent acting on a mistaken interpretation of the law, elected officials, such as members of the local school board, may request an Attorney General's opinion about a law. As long as the state agent follows the Attorney General's opinion, even if a court rules the interpretation as wrong, the state agent's immunity from civil liability remains in effect.

Federal Law

State-granted immunities, however, may not protect against civil liability in federal court. Individuals alleging that their constitutional rights have been violated by an educator may seek relief under federal law. These types of cases are called Section 1983 actions (because of its section number in the federal code). This federal law essentially states that any United States citizen who violates the constitutional or statutory rights of another person shall be held liable to the injured person.⁴¹

For educators or any other state employees sued under this federal law, state-granted immunities are irrelevant. Section 1983 actions, though, do allow for **qualified immunity**, which will allow immunity from damages.⁴² An educator (or other government official) is entitled to this immunity unless the educator has violated clearly established statutory or constitutional rights that a reasonable person would have been aware of.

For example, parents of two elementary school students sued the school board, school officials, and teachers alleging a violation of the students' civil rights.⁴³ Upon realizing that seven dollars had been stolen from the classroom, the teacher forced the students to remove their shoes and socks. The parents sued, claiming that the search was unreasonable, and thus, it violated the Fourth Amendment protection against unreasonable searches. The court held that because neither the United States Supreme Court, the Eleventh Circuit federal appeals court nor the Alabama Supreme Court had defined the reasonableness of a search in the context of facts materially similar to those of this school search, the school defendants were not on notice of any clearly established law that prohibited their actions. Therefore, the educator defendants were immune from suit. The court explained that "school officials cannot be required to construe general legal formulations that have not once been applied to a specific set of facts by any binding judicial authority."

Prohibition against Possessing Certain Items at School

It is unlawful for students and others to possess certain items while on school property.

Electronic Communication Devices

Under Alabama law, students may not carry pocket pagers or electronic communication devices, such as cellular phones, in school.⁴⁴ Upon approval by the board of education, these devices may be allowed when required for health or other extraordinary needs. If found in violation of this law, the student shall be subject to suspension or expulsion by the board of education.

Handguns and Other Weapons

The State Department of Education has established administrative regulations requiring all school systems to adopt and enforce a uniform policy to prohibit anyone, other than law enforcement officers, from bringing or possessing deadly weapons or dangerous instruments on school grounds.⁴⁵ Persons in violation of these regulations may be asked to leave school grounds. Refusal to abide by a school's weapon policy may result in an illegal trespass or possibly other criminal violations, and law enforcement authorities should be contacted.

There are several other laws directly related to weapons at school.

Juvenile Possessing a Handgun – Under federal law, a juvenile (defined as a person under 18 years of age) may not possess at any location, including a school, a handgun or ammunition for a handgun (except for limited circumstances such as participating in an ROTC program).⁴⁶

Handguns and Other Deadly Weapons in Public Schools – Any person *with the intent to do bodily harm* that knowingly carries or possesses a deadly weapon on the premises of a public school, including a school bus, has committed a felony.⁴⁷ Upon conviction for this crime, a person may receive a sentence of 1 to 10 years in prison and a fine of up to \$5,000. If the deadly weapon was actually used in the commission of the crime, the sentence will be a mandatory 10 years.⁴⁸

A **deadly weapon** is defined as a firearm, or anything designed, made or adapted for the purposes of inflicting death or serious physical injury, including but not limited to, a pistol, rifle, or shotgun; or a bazooka, hand grenade, missile, or explosive or incendiary device; or a switch-blade knife, gravity knife, stiletto, sword, or dagger; or any club, baton, billy, black-jack, bludgeon or metal knuckles.⁴⁹

If it is determined that a student has brought or has in his possession a firearm in a school building, on school grounds, on a school bus, or at other school-sponsored functions, the student must be expelled for a period of one year.⁵⁰ All city and county school boards are required to adopt and implement this as local policy. School boards may modify this requirement for a student on a case-by-case basis. Students who are expelled for violating this law, however, may not be allowed to attend regular school classes in any public school in the state during the expulsion period but may attend an alternative school during the expulsion period. If a student brings any other weapons to school, the student should be immediately suspended and provided with a hearing before the local school board within five days.⁵¹

Without a license to do so, no person can carry a pistol concealed on his or her person or in any vehicle.⁵² A violation of this law constitutes a misdemeanor.⁵³ The sheriff of the county where the individual requesting the license resides has the authority to issue a qualified or unlimited license allowing a person to carry a weapon concealed on his body or within his

vehicle.⁵⁴ Because the sheriff has some measure of discretion, he may issue a license with the restriction that it may not be carried on school grounds. If a license is restricted in such a manner, possession of a handgun on school grounds would constitute illegal possession of a handgun on school grounds. Thus, in addition to the penalties for violation of the concealed handgun law, the individual would be subject to the enhanced penalties for possession of a handgun on school grounds.

Attorney General's Opinion

No. 80-249 / Public Meetings

Question: *Can a board of education take a final vote on how to deal with disciplinary problems of students relating to drug offenses while in executive session?*

Opinion: Neither the press nor the public may be allowed at board of education meetings where drug offenses of individual students are being discussed. Voting on such matters should be open to the public, but the identity of the students should not be disclosed.

Drugs

Illegal possession of a controlled substance is forbidden on school grounds. Possession or receipt of a controlled substance is a felony, punishable by 1 to 10 years imprisonment.⁵⁵ Alabama also provides enhanced penalties for the unlawful distribution of an illegal controlled substance on the campus or within a three-mile radius of the campus boundaries of any public or private school, college, university or other educational institution in this state.⁵⁶ In addition to the penalties imposed for the unlawful sale of a controlled substance, courts are required to impose an additional five-year sentence of imprisonment with no possibility for probation.

Alcohol

No person under age twenty-one (21) may purchase, consume, or possess any alcohol or liquor in Alabama without violating the law.⁵⁷ When a someone under twenty-one violates this law, he may be fined between \$25.00 and \$100.00 or imprisoned for up to 30 days or both. Additionally, under Alabama law, it is a crime for anyone to knowingly sell or give any alcoholic beverage to any school student (under 21 years old).⁵⁸ It is also illegal for any person or organization to possess or to keep any alcoholic beverage in or on the campus/premises of any school building of any public school other than a college or university. Violation of this law is a felony, punishable in the state prison for a sentence of 1 to 3 years.

Tobacco Products

Under Alabama law, a person under the age of nineteen (19) may not buy, use, or possess tobacco or tobacco products within the state.⁵⁹ Any tobacco or tobacco product found in the possession of a minor is contraband and subject to seizure by law enforcement. Although a violation is not a criminal offense, any minor violating this law will be issued a citation by law enforcement and shall be fined between \$10.00 and \$50.00 for each violation.⁶⁰ These citations are to be issued only by law enforcement officers and not by school officials.⁶¹ Finally, “any person who sells, barter, exchanges, or gives to any minor any cigarettes, cigarette tobacco or cigarette paper, or any substitute for either of them” will be fined \$10.00 to \$50.00 and may also be imprisoned for up to 30 days.⁶² Substitutes for cigarette tobacco include cigars, chewing tobacco, snuff, and any other form of leaf or powdered tobacco.⁶³ Marijuana is not considered a tobacco substitute.⁶⁴

Duty of School Officials to Report

In Alabama, school officials have a duty to report certain types of incidents involving students to law enforcement or other authorities. It is essential for educators to know, understand, and comply with these laws. Failure to do so may result in criminal and / or civil liability.

Crimes Occurring on School Property or During School Functions

Teachers, principals, and other school employees of public elementary, junior, and senior high schools have a duty to report all incidents involving property damage and physical assaults on students and school personnel.⁶⁵ School personnel have a duty to report any such incident occurring on school property, during school activities (even if it occurred off school property), or at any other time when such an incident can be reasonably related to school functions. Teachers and other school employees have a duty to immediately report to the school principal any such incident of which they have knowledge. The school principal must file a report within 72 hours with the local superintendent of education. The superintendent must then provide the school board and the county sheriff with a copy of the report.

School officials are neither required nor prohibited from reporting incidents involving only students from the same school where neither a dangerous weapon was involved nor medical attention was required. Any superintendent, principal, teacher, or other school employee who violates this law is guilty of a misdemeanor, punishable by not more than 90 days in jail and not more than a \$500 fine. In addition, school principals are required by law to notify the appropriate law enforcement officials when any person violates local board of education policies concerning drugs, alcohol, weapons, physical harm to a person, or threatened physical harm to a person.⁶⁶ The local school board must immediately suspend the student from attending regular classes.

When students have violated the prohibition against bringing firearms to school or possessing firearms at school, the school principal must notify the appropriate law enforcement authorities, which may include city police, county sheriffs, and the district attorney.⁶⁷ In turn, these authorities may then turn the student over to the proper judicial authorities. Additionally,

the principal must also notify the parent of the accused student. Finally, local education agencies submitting applications for federal funds to the State Department of Education must include in its application the name of the school, the number of students expelled, and the types of weapons concerned.

Suspected Child Abuse

When a child is known or suspected to be a victim of child abuse or neglect, school teachers and officials are required to report or cause a report to be made orally, followed by a written report, to the Department of Human Resources, municipal police chiefs, or county sheriffs.⁶⁸ Under Alabama law, teachers or school officials who in good faith report child abuse have absolute immunity from civil and criminal lawsuits.⁶⁹ A teacher or school official *who fails to comply* with this law is guilty of a misdemeanor punishable by no more than six months imprisonment or a fine of not more than \$500.⁷⁰

Reporting Noncompliance with Attendance Rules

Every child between the ages of 7 and 16 is required to attend school and the parent or guardian of the child is responsible for the child's attendance.⁷¹ All students who enroll in public school are subject to specific school attendance and truancy laws. The school attendance officer is required by the local superintendent of education to investigate all cases of non-enrollment and non-attendance. Where no valid reason exists for failure to enroll or attend, notice must be given to the parent or guardian. If it is determined that no valid reason or excuse exists, the enrollment officer must bring criminal prosecution against the parent or guardian. Any parent or guardian who fails to require his child to regularly attend school or to properly conduct himself as a student (meaning a rule violation that may result in the suspension of the student) is guilty of a misdemeanor, punishable up to a \$100 fine and/or 90 days of hard labor.⁷² When a school official determines or has reason to believe that the parent or guardian is at fault or responsible for failure of the child to attend school, the official must report the information to the local superintendent.⁷³ In turn, the superintendent must then report the information to the district attorney within 10 days.⁷⁴ Any principal or superintendent who intentionally fails to report the suspected violation is guilty of a misdemeanor, punishable up to a \$500 fine and/or 90 days in jail.

Attorney General's Opinion

No. 95-334 / Reporting to the District Attorney

Question: Which school suspensions should be referred to the District Attorney?

Opinion: Those suspensions where the school official determines or has reason to believe the parent or guardian is at fault, or is responsible, for the failure of the child to regularly attend school, or behave properly, should be reported to the district attorney.

Reporting Noncompliance with Behavioral Rules

All student suspensions need not be reported to the district attorney.⁷⁵ Rather, suspensions should be reported to the district attorney when school officials determine or have reason to believe that the parent or guardian is at fault or responsible for failure of the child to behave properly.⁷⁶ When a parent or guardian fails to compel the child to properly conduct himself or herself as a student, school officials must document the conduct. The behavioral violation should concern one that may result in suspension. The principal must then report the information to the local superintendent. In turn, the superintendent must then report the information to the district attorney within 10 days. Any principal or superintendent who intentionally fails to report the suspected violation is guilty of a misdemeanor, punishable up to a \$100 fine and/or 90 days in jail.

Attorney General's Opinion

No. 96-100 / Crimes and Offenses

Question: *Can a local board of education implement and enforce a policy which would provide discipline of its students when 1) A student commits a criminal offense (traffic, misdemeanor, or felony) off campus, or not at an authorized school-related event; 2) A student threatens or commits an act of violence or vandalism against a teacher or school administrator off campus; or 3) A student commits an act of violence or vandalism against another student off campus?*

Opinion: A policy may be promulgated by a local board of education which provides for the discipline of any student whose presence is detrimental to the safety and welfare of the pupils and/or teachers of the school. Any policy providing for disciplining a student for off-campus conduct should be promulgated and implemented with circumspection and caution.

Other School-Related Laws

Assault of a Teacher

Assault of a teacher is second degree assault.⁷⁷ A person commits this crime when, with *intent to cause physical injury to a teacher* or to an employee of a public educational institution during or as a result of the performance of his or her duty, he *causes physical injury to any person*. Assault in the second degree is a felony, punishable by 1 to 10 years imprisonment and a fine of not more than \$5,000.

Menacing

A person commits the crime of menacing if, by physical action, he intentionally *places or attempts to place another person in fear* of imminent serious physical injury.⁷⁸ Menacing is a misdemeanor punishable by no more than six months imprisonment or a fine of not more than \$500.

False Report of a Bomb or Other Incident

Students may think it is a silly prank to call in a bomb threat or other disaster to evacuate school. However, it is a serious crime for a person to call in a false report of any crime or catastrophe, whether to the police or the school.⁷⁹ A false report can bring up to a year in jail. If the report is of a bomb, the student has committed a felony, punishable by 1 to 10 years imprisonment and a possible fine of \$5,000.

Terrorist Threat

A similar crime is committed when a person intentionally threatens another person to commit a crime for the purpose of terrorizing that person or disrupting school activities.⁸⁰ This crime is a felony, punishable by 1 to 10 years imprisonment and a fine of not more than \$5,000.

Property Destruction

It is a violation of the law for any person to intentionally deface any public building or public property. Possession of any traffic sign erected by the

state, a county, or a municipality is a violation of the law. Furthermore, it is unlawful for any person to intentionally destroy, knock down, remove, deface, or alter any letters or figures on a traffic sign, or to in any way damage any traffic control device.⁸¹ Public school systems are entitled to recover monetary compensation from the parent or guardian of any minor who maliciously and willfully destroys property belonging to the school system.⁸²

Readmission Following a Drug, Alcohol, or Weapons Violation

If a student violates a local board of education policy concerning drugs, alcohol, weapons, physical harm or threatened physical harm to a person, the student may not be readmitted to the public schools of Alabama until:

- 1) criminal charges or offenses arising from the conduct, if any, have been disposed of by appropriate authorities, and
- 2) the student has satisfied all other requirements imposed by the local board of education concerning readmission.⁸³

Removal, Isolation, or Separation of Students Creating Disciplinary Problems

Any public school board may create rules and regulations with respect to behavior and discipline. To enforce these rules, the school board may remove, isolate, or separate pupils who create disciplinary problems in any classroom or school activity. Any such rules and regulations must be approved by the State Board of Education. In removing, isolating, or separating a student, the board may not deprive the student of the right to an equal and adequate education.⁸⁴

Corporal Punishment

Because teachers are expected to maintain order and discipline in their classrooms, they have the authority to use appropriate disciplinary measures up to and including corporal punishment. As long as teachers follow approved policy in the effort to maintain discipline, the teacher is immune from civil and criminal liability.⁸⁵

GUIDELINES FOR RELIGIOUS ACTIVITIES IN SCHOOLS

INTRODUCTION

The following guidelines are issued to provide assistance to public school administrators and teachers. These guidelines are based on the rules reiterated by the Eleventh Circuit Court of Appeals in *Chandler v. James* and in opinions of the United States Supreme Court. These guidelines are intended to be instructive and not all-inclusive.

PERMISSIBLE ACTIVITIES IN GENERAL

- Students may voluntarily engage in individual or group prayer during non-instructional time or at school-sponsored events. This includes individual or group prayer before or after athletic events. School officials (e.g. coaches) should neither encourage nor discourage individual or group prayer. Organization or direction of a prayer by a school official would not be appropriate; this also means that school officials should not hold a student election for the purpose of choosing a student to give a prayer at a school-sponsored event.
- Students may voluntarily engage in religious discussions during non-instructional time or at school-sponsored events. Students may speak to and attempt to persuade their peers about religious topics just as they do with regard to political or other topics.
- Students may express religious beliefs in reports, homework, artwork, and other written and oral assignments, which should be judged by ordinary academic standards of substance and relevance.
- Private citizens (including students) may distribute religious literature in accordance with all applicable time, place and manner restrictions applicable to the distribution of literature that is unrelated to school curriculum activities.
- Students may display religious messages or symbols on items of clothing (e.g., cross, menorah, Star of David, etc.) to the extent that they may display comparable non-religious messages or symbols on items of clothing. Students also may wear particular attire (e.g., yarmulkes, head scarves, etc.) during the school day or at school-sponsored events as part of the students' religious practices consistent with board policies and State law.
- Private citizens and student groups must be allowed access to school facilities for meetings of a religious nature, subject to the same limitations placed on non-religious meetings.
- Students in secondary schools may have announcements of meetings of a religious nature conveyed in the same manner that announcements are made for meetings of other non-religious groups (e.g. public address system, school newspaper, etc.).
- Teachers may teach about religion, including the Bible and other scripture, provided that such teaching concerns the history of religion, comparative religions, the Bible (or other scripture) as literature, and/or the role of religion in the history of the United States. The use of religious symbols (e.g., cross, menorah, symbols of Native American religions) is permitted as a teaching aid or resource provided such symbols are displayed as an example of the cultural and religious subject being taught.
- A fixture or symbol that is traditionally associated with a particular religion (e.g., nativity scene, menorah, etc.) may be included as a "prop" in a school holiday production to the same degree that non-religious props are used in school productions, provided such symbols are displayed as an example of the cultural and religious heritage of the holiday.
- Traditional holiday music may be included in school productions (e.g., choral events, band activities, etc.) in keeping with the cultural or religious heritage of the holiday.

SPECIAL CONSIDERATIONS FOR COMMENCEMENT/GRADUATION BACCALAUREATE SERVICES

- If a school by policy and practice rents out its facilities to private groups, it must rent them out on the same terms and conditions, and on a first-come first-served basis, to organizers of privately sponsored religious baccalaureate services.
- Teachers and school administrators must demonstrate and observe neutrality with regard to private baccalaureate services and school officials may neither encourage nor discourage student attendance at such events.
- Teachers and school administrators may attend such functions in their individual capacities.
- Baccalaureate services are to be announced or advertised in the same manner as other non-religious meetings, such as notices in the school newspaper or use of the public address system and bulletin boards.

COMMENCEMENT EXERCISES

- Student-initiated religious speech is permitted; however, school officials are not to encourage, organize, or direct such speech. This also means that school officials should not hold a student election to choose a student to give a prayer at school-sponsored commencement exercises.
- Regularly scheduled student speakers (e.g., valedictorian, salutatorian, class president) may make religious comments during their speeches. School officials are not to encourage or direct such speech.
- Religious persons and/or organizations are entitled to advertise in school commencement programs/directories on the same terms as other persons or community organizations.

The intent of these Guidelines is to outline a course of study, conduct, and related activities that does not prescribe directly or indirectly a single religion, belief, or observance and that is consistent with the prevailing decisions by the United States Supreme Court and the Eleventh Circuit Court of Appeals.

Endnotes

- ¹ *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).
- ² *Terry v. Ohio*, 392 U.S. 1, 21 (1968).
- ³ *T.L.O.*, 469 U.S. at 341.
- ⁴ *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503, 506 (1969).
- ⁵ *Cales v. Howell Pub. Schs.*, 635 F. Supp. 454, 455 (E.D. Mich. 1985).
- ⁶ *T.L.O.*, 469 U.S. at 341-42.
- ⁷ *Bridgman v. New Trier High Sch. Dist. No. 203*, 128 F.3d 1146, 1149 (7th Cir. 1997).
- ⁸ *Williams v. Ellington*, 936 F.2d 881, 887 (6th Cir. 1991).
- ⁹ *C.B. v. Driscoll*, 82 F.3d 383 (11th Cir. 1996).
- ¹⁰ *Florida v. J.L.*, 529 U.S. 266, 270 (2000).
- ¹¹ *Alabama v. White*, 496 U.S. 325, 331 (1990).
- ¹² *Veronia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 653-660 (1995).
- ¹³ *People v. Dukes*, 580 N.Y.S.2d 850 (N.Y. Crim. Ct. 1992).
- ¹⁴ *Florida v. J.A.*, 679 So.2d 316 (Fla. Dist. Ct. App. 1996).
- ¹⁵ Attorney General's Opinion No. 97-029.
- ¹⁶ *United States v. Katz*, 389 U.S. 347 (1967).
- ¹⁷ *Stern v. New Haven Community Schs.*, 529 F.Supp. 31 (E.D. Mich. 1981).
- ¹⁸ See, e.g., *Ward v. State of Florida*, 636 So. 2d 68, 71 (Fla. Dist. Ct. App. 1994).
- ¹⁹ *Coolidge v. New Hampshire*, 403 U.S. 443 (1971).
- ²⁰ *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646 (1995).
- ²¹ *United States v. Place*, 462 U.S. 696 (1983).
- ²² *Edwards v. Rees*, 883 F.2d 882, 883 (10th Cir. 1989).
- ²³ 989 P.2d 431 (N.M. Ct. App. 1999).
- ²⁴ 876 S.W.2d 466, 467 (Tex. Ct. App. 1994).
- ²⁵ *State of Wisconsin v. Angelina D.B.*, 211 Wis.2d 140, 564 N.W.2d 682 (1997).
- ²⁶ *Spence v. Washington*, 418 U.S. 405, 410-11 (1974).
- ²⁷ *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503 (1969).
- ²⁸ *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986).
- ²⁹ *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 266 (1988).
- ³⁰ *Boroff v. Van Wert City Bd. of Educ.*, 20 F.3d 465 (6th Cir. 2000).
- ³¹ *Blivens v. Albuquerque Pub. Sch.*, 899 F. Supp. 556 (D.N.M. 1995).
- ³² *Olesen v. Board of Educ.*, 676 F. Supp. 820 (N.D. Ill. 1987).
- ³³ *Alabama and Coushatta Tribes of Texas v. Trustees of the Big Sandy Indep. Sch. Dist.*, 817 F. Supp. 1319 (E.D. Tex. 1993).
- ³⁴ *Karr v. Schmidt*, 460 F.2d 609 (5th Cir. 1972).
- ³⁵ *Black v. Cothren*, 316 F. Supp. 468 (D. Neb. 1970).
- ³⁶ Attorney General's Opinion No. 97-259.
- ³⁷ *Bunnam v. Ovbiagele*, __ So.2d __, 2001 WL 823592 (Ala.), (Ala. 2001)
- ³⁸ Ala. Code § 16-1-24.1(g).
- ³⁹ Ala. Code § 16-28A-4.
- ⁴⁰ *L.Q.A. v. Eberhart*, 920 F. Supp. 1208, 1231 (M.D. Ala. 1996).
- ⁴¹ 42 U.S.C. § 1983.
- ⁴² *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).
- ⁴³ *Jenkins v. Talladega City Bd. of Educ.*, 115 F.3d 821 (11th Cir. 1997).
- ⁴⁴ Ala. Code § 16-1-27.
- ⁴⁵ Ala. St. Bd. Ed. Admin. Code § 290-3-1-.02.
- ⁴⁶ 18 U.S.C. § 922(x)(2).
- ⁴⁷ Ala. Code § 13A-11-72.
- ⁴⁸ Ala. Code § 13A-5-6.
- ⁴⁹ Ala. Code § 13A-1-2(11).
- ⁵⁰ Ala. Code § 16-1-24.3(a).
- ⁵¹ Ala. Code § 16-1-24.1(b).
- ⁵² Ala. Code § 13A-11-73.
- ⁵³ *City of Attalla v. Smith*, 596 So.2d 651 (Ala. Crim. App. 1992).
- ⁵⁴ Ala. Code § 13A-11-75.
- ⁵⁵ Ala. Code § 13A-12-212.
- ⁵⁶ Ala. Code § 13A-12-250.
- ⁵⁷ Ala. Code § 28-1-5.
- ⁵⁸ Ala. Code § 16-1-10.
- ⁵⁹ Ala. Code § 28-11-13.
- ⁶⁰ Ala. Code § 28-11-14.
- ⁶¹ Attorney General's Opinion No. 98-102.
- ⁶² Ala. Code § 13A-12-3.
- ⁶³ Attorney General's Opinion No. 93-43.
- ⁶⁴ Attorney General's Opinion No. 87-332
- ⁶⁵ Ala. Code § 16-1-24.
- ⁶⁶ Ala. Code § 16-1-24.1.
- ⁶⁷ Ala. Code § 16-1-24.3.
- ⁶⁸ Ala. Code § 26-14-3.
- ⁶⁹ Ala. Code § 26-14-9.
- ⁷⁰ Ala. Code § 26-14-13.
- ⁷¹ Ala. Code §§ 16-28-3, 16-28-12(a).
- ⁷² Ala. Code § 16-28-12(a).
- ⁷³ Attorney General's Opinion No. 95-334.
- ⁷⁴ Ala. Code § 16-28-12(c).
- ⁷⁵ Attorney General's Opinion No. 95-334.
- ⁷⁶ Ala. Code § 16-28-12 (c).
- ⁷⁷ Ala. Code § 13A-6-21(a)(5).
- ⁷⁸ Ala. Code § 13A-6-23.
- ⁷⁹ Ala. Code § 13A-11-11.
- ⁸⁰ Ala. Code § 13A-10-15.
- ⁸¹ Ala. Code § 13A-8-71.
- ⁸² Ala. Code § 16-1-24.1(e)(3).
- ⁸³ Ala. Code § 16-1-24.1(c).
- ⁸⁴ Ala. Code § 16-1-14.
- ⁸⁵ Ala. Code § 16-28A-1.

Checklist for Searching Students

- ☐ Remove the student to a private area away from other students.
- ☐ Closely observe the student during removal and search.
- ☐ Have another school official present as a witness during the search.
- ☐ Have school officials of the same gender as the student conduct and witness the search.
- ☐ Offer the student an opportunity to surrender the item.
- ☐ Conduct the search in a discreet manner to minimize possible embarrassment to the student.
- ☐ Seize any item that violates a criminal law or school rule or provides evidence of such a violation.
- ☐ Before going through a student's personal belongings, see if you can identify the item for which you are searching. Once you find the item you are looking for, stop searching, unless at that moment, there is reasonable suspicion to believe that additional items will be found. For example, if you find loose bullets, it is reasonable to continue searching for a pistol.
- ☐ Follow the **chain-of-custody checklist**:
 - ☐ Make an inventory report of the seized item that includes:
 - ☐ The description of item seized
 - ☐ The date and time of the seizure
 - ☐ The source of the seized item (from whom and location obtained)
 - ☐ The name of the person who seized the item
 - ☐ The name of the person who witnessed the search
 - ☐ Place each seized item in a separate, sealed envelope marked with inventory information.
 - ☐ Secure evidence in a locked storage area with restricted access.
 - ☐ Do not leave any evidence unattended.
 - ☐ Transfer the evidence in sealed envelopes to the police in a timely manner.